

Durex Industries and International Brotherhood of Teamsters, Local 617. Case 22-CA-20381

October 20, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

Upon a charge filed by the Union on December 30, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1995, against Durex Industries, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 18, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On September 20, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 18, 1995, notified the Respondent that unless an answer were received by July 25, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Clifton, New Jersey, has been engaged in the manufacture of printing rollers. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Clifton, New Jersey facility products, goods and materials valued in excess

of \$50,000 directly to points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time roller makers and shipping and receiving employees employed by the Respondent, including regular, apprentice and probationary employees, but excluding office clerical employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period February 1, 1993, to February 1, 1994. For approximately the past 20 years, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about July 1, 1994, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a Letter of Agreement extending the parties' 1993-1994 collective-bargaining agreement. Since about July 1, 1994, the Union has requested that the Respondent execute the written Letter of Agreement containing the agreement described above. Since about September 29, 1994, the Respondent has failed and refused to execute this agreement.

About February 2, 1995, the Union requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about February 10, 1995, the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

Since about July 10, 1994, the Respondent has failed and refused to remit contractual contributions to the Union's Inland Pension Fund and to the Union's Health and Welfare Fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent, since about September 29, 1994, has failed to execute a written Letter of Agreement containing the terms and conditions of employment of the unit extending the parties' 1993-1994 collective-bargaining agreement, after having reached complete agreement with the Union, we shall order the Respondent to execute the Letter of Agreement and give it retroactive effect, and to make the unit employees whole for any losses they may have suffered as a result of the Respondent's failure and refusal to execute the Letter of Agreement. Backpay shall be computed in accord with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Union's Inland Pension Fund and the Union's Health and Welfare Fund since about July 10, 1994, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has unlawfully failed and refused to meet and bargain with

the Union since about February 10, 1995, we shall order it to do so.

ORDER

The National Labor Relations Board orders that the Respondent, Durex Industries, Clifton, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to execute a written Letter of Agreement containing the terms and conditions of employment of the unit agreed to by the parties about July 1, 1994, extending the parties' 1993-1994 collective-bargaining agreement. The unit includes the following employees:

All full-time roller makers and shipping and receiving employees employed by the Respondent, including regular, apprentice and probationary employees, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Failing or refusing to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

(c) Failing or refusing to remit contractually required contributions to the Union's Inland Pension Fund and to the Union's Health and Welfare Fund.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the Letter of Agreement and give it retroactive effect, and make the unit employees whole, with interest, for any losses they may have suffered as a result of the Respondent's failure and refusal to execute the Letter of Agreement, in the manner set forth in the remedy section of this decision.

(b) Make whole its unit employees by making all delinquent contributions to the Union's Inland Pension Fund and to the Union's Health and Welfare Fund and by reimbursing unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of this decision.

(c) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Clifton, New Jersey, copies of the attached notice marked "Appendix."² Copies of

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to execute a written Letter of Agreement containing the terms and conditions of employment of the unit agreed to by us and the International Brotherhood of Teamsters, Local 617 about July 1, 1994, extending our 1993-1994 collective-bargaining agreement. The unit includes the following employees:

All full-time roller makers and shipping and receiving employees employed by us, including regular, apprentice and probationary employees, but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

WE WILL NOT fail or refuse to remit contractually required contributions to the Union's Inland Pension Fund and to the Union's Health and Welfare Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute the Letter of Agreement and give it retroactive effect, and make our unit employees whole, with interest, for any losses they may have suffered as a result of our failure and refusal to execute the Letter of Agreement, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL make whole our unit employees by making all delinquent contributions to the Union's Inland Pension Fund and to the Union's Health and Welfare Fund and by reimbursing unit employees for any expenses ensuing from our failure to make the required contributions, as set forth in a decision of the National Labor Relations Board.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

DUREX INDUSTRIES